

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Settlement/Hearing: March 13, 2019
Time: 10:00 A.M.

In re,)
BENJAMIN KLEIN,)
PO Box 747)
Monsey NY 10952)
SSN xxx-xx-7215)
Debtor(s).)

Case No. 18-23417 RDD
Chapter 13

BENJAMIN KLEIN,)
)
Plaintiff(s),)
)
vs.)
)
Moshe Leib (Moses) Witriol, Yitzchok)
Dov (Isaac, George) Fisch, Rabbi)
Gabriel Stern, Zalman Dov Klein, Malky)
Fisch, Dina Klein, Aryeh Gutman,)
Schlomo Gutman, Aron Eagle, Jacob)
(Yossi) Eagle, Esther Klein, Avraham)
Lehrer, (& upon leave granted) Joseph)
Maria, and Does 1-100,)
)
Defendant(s).

Adversary No. 19-08200 RDD

**NOTICE OF
CROSS MOTION** (To Remedy and in
Response to defective motions by certain
Defendants &/or Cured and other Relief.)

2019 MAR -4 P 4:37
U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

PLEASE TAKE NOTICE, that upon the annexed Affirmation of BENJAMIN KLEIN, and upon all of the pleadings and proceedings heretofore had herein, the undersigned will cross-move this Court at a hearing held at the United States Bankruptcy Court for the Southern District of New York located at 300 Quarropas Street, White Plains, New York, 10601 on the 13th day of March, 2019, at 10:00 in the forenoon of that day, or as soon thereafter as the Cross Motion may be heard, for an Order granting Plaintiff:

1. a) The striking of the 6 Motions (Doc4, Doc7, Doc12-15 + 19-21, Doc16-18, and Doc 25-28 in this case), and/or in the alternative, not acted on, for being defective, and/or in the alternative,
b) The denial of the 6 Motions to Dismiss for having no merit and/or Cured, and/or in the alternative,
c) Leave to amend the Complaint (Doc1 in the case).
2. a) Leave to sue Defendant Joseph Maria for acting as the law onto himself, and/or in the alternative,
b) A determination that such leave is not required, and/or in the alternative,
c) An interim Order that Hamaspik (Tenant) pay the \$1472 monthly rent to Attorney Robert Lewis, who will pay Chase Bank (*Chase Bank prefers the payments be made via Attorney vs. directly from Tenant*).
3. To approve an entry of Default by the Bankruptcy Court Clerk against Defendants: Avraham Lehrer, (*and Joseph Maria, if leave to sue is not required, otherwise upon leave granted*).

And an entry of Default against all other Defendants if they further fail to file responsive pleadings, timely and properly, as required and Ordered by this court. And /or who this court deems to have already willfully done so.

And for further relief as may be deemed just and proper.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief sought by the Cross Motion, shall be in writing, shall conform to the Bankruptcy Rules and Local Rules of the Bankruptcy Court, shall state the name of the objectant, the basis of the objection and state with particularity the grounds therefore and shall be filed with the Bankruptcy Court electronically through the Bankruptcy Court's electronic filing system. A hard copy of the objections shall be delivered to the Chambers of the Honorable Robert D. Drain and served on the undersigned at the address set forth below, so as to be received no later than 6:00 pm on March 11, 2019. Only those objections that are timely filed, served and received will be considered by the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that, in the event no objections are raised to the relief requested in the Cross Motion, the Cross Motion shall be deemed uncontested on the return date and the relief sought may be granted in the Court's discretion.

Dated: Rockland, New York
March 4, 2019



Benjamin Klein, Plaintiff
PO Box 747
Monsey NY 10952
(845) 694-4578
benmail914@gmail.com

To the following parties:

Moshe Leib (Moses) Witriol 417 Schunnemunk Rd. Highland Mills, NY 10930	Kiryas Joel (Police) Dept. of Public Safety, Moshe Leib (Moses) Witriol 158 Schunnemunk Rd. Monroe NY 10950	Nicholas Fortuna -3 rd Floor 1010 Avenue of the Americas New York, NY 10018 (212) 213-8844 nfortuna@allynfortuna.com
Marc Stuart Goldberg 670 White Plains Road, Suite 121 Scarsdale, NY 10583 (914) 725-8200 (914) 725-7724 (fax) mgoldberg@mslegal.com	Joseph A. Churgin 55 Old Turnpike Rd. Suite 209 Nanuet NY 10954 (845) 624-3820 j.churgin@savadchurgin.com	Avraham Lehrer 6 Karen Drive Spring Valley NY 10977
Robert M. Sassloff Robinson Brog Leinwand Greene Genovese & Gluck P.C. 875 Third Avenue, 9 th Floor New York NY 10022-0123 (212) 586-4050 (212) 956-2164 (fax) rms@robinsonbrog.com	Joseph J. Haspel, Esq. 1 West Main Street Goshen NY 10924 (845) 294-8950 (845) 694-4409 jhaspel@haspellaw.net	Joseph Maria 301 Old Tarrytown Rd. White Plains NY 10603 (914) 684-0333 jmariapc@optonline.net

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Gabriel Stern, Zalman Dov Klein,)
Malky Fisch, Dina Klein, Aryeh)
Gutman, Schlomo Gutman, Aron Eagle,)
Jacob (Yossi) Eagle, Esther Klein,)
Avraham Lehrer, (& upon leave)
granted) Joseph Maria, and Does 1-100,)

Defendant(s).)

Adversary No. 19-08200 RDD

**Affirmation in Support of
CROSS MOTION (cured)**

a. Background: Page 1
b. Joseph Maria: Page 3
c. Motions Defective Page 4
d. On Merits: Page 4
e. Default: Page 5

State of New York)

County of Rockland)

ss:

Benjamin Klein being duly sworn, deposes and says:

1. He is the Plaintiff in this case.

a. **Reply to letter (Doc22)** (Background & to address concerns at January 16, 2019 hearing).

2. In reply to letter (Doc22 in this case), Plaintiff and Nathan Horowitz (*Mr. Horowitz for himself and represented that his client Esther Klein*) have agreed in email, not to disclose the settlement discussions, other than to this court *off the record*.

3. So Plaintiff assumed that submitting a letter and copying only Nathan Horowitz is the proper process. Based on the disclosure, it seems it was the wrong assumption. It won't happen again. And Plaintiff apologizes for the past. *However, there is a conflict of interest between Mr. Goldberg's clients.*

Feasibility, Vigilante-ism, Council

4. Plaintiff did not include Creditor Esther Klein as a Defendant in this Adversary Proceeding due to Plaintiff being vindictive. Esther Klein conspired with all the causes of actions as alleged in the Complaint (Doc1 of this case).

5. And as alleged in the Complaint, it's evidenced by court documents and depositions in state court.

a) In example, in court transcripts under oath she provides details on all contacts (described in paragraph 20 of the Complaint) Plaintiffs attorney asked her about. Contacts she had no knowledge of, prior to Plaintiff engaging with them to do business.

b) In the transcripts, she further spins ironic reasons for all these contacts, why they dumped Plaintiff midstream in the business relationship. Putting the allegations against Esther Klein above the threshold of plausibility.

c) And in example in October 2013 Esther Klein stated to Plaintiff that going forward she will be making all decisions in Plaintiff's life. Then on November 15, 2013, after trying to extort Plaintiff, in conspiracy with other Defendants, she filed a frivolous lawsuit against Plaintiff.

d) And there is likely enough evidence for Summary Judgment, if the Enterprise wouldn't have been so sophisticated in their Frauds and Vigilante-ism on a global scale, and Oppressed Plaintiff so absolutely financially and otherwise, to the point of needing to file this action Pro Se and ahead of schedule.

e) And in example, Defendants Moshe Lieb (Moses) Witriol and Esther Klein, routinely meet up to conspire in person, due to their concerns that their criminal activity may be recorded on Federal Law Enforcement wire taps.

6. The Vigilante activities alleged in the Complaint is the norm, way of life we all grew up with and accepted as the authority (sovereign). So only to the outside world (in Western Societies) may the allegations in the Complaint sound far fetched and too dark to participate with. But in fact it's all understated in the Complaint. It's the tip of the iceberg.

7. And the allegations in the Complaint of the arrests, of multiple Defendants, for multiple Felonies, by government law enforcement agencies, put's the allegations way above the threshold of plausibility. In part because, by definition, government law enforcement personnel and their documents allege the same.

8. That is in addition to Esther Klein's claims not being reduced to a judgment, and it being an obvious abuse of discretion (willfully ordering child support for an adult above age 21) and other defects, therefore it's property distribution under federal law (according to Federal Circuit Court Rulings), therefore dischargeable and feasible, as intended by Congress in such Oppressive situations.

9. And after this court provided the comfort order on January 25, 2019, that the automatic stay does not apply to the entry of the Judgment of Divorce, they just requested another bite at the apple (to further modify the Decision financially) from Judge Berliner in state court on February 5, 2019.

10. And Plaintiff's allegations are not conjecture. In example when Plaintiff alleges in the Complaint (Doc1 page 3, paragraph 14) "...Enterprise leaders refuse to stop silencing and Oppress all who voice concern on Child Sexual Exploitation..." Plaintiff personally met with Grand Rabbi Aron Teitelbaum (the #1 or #2 global leader) on December 9, 2018, 34 days prior to filing the Complaint in this action.

11. And in example, as per court records, Defendant Rabbi Gabriel Stern claims clergy privilege, yet he never performs clergy duties. He is just a Rabbi for hire on hourly fees for litigation, corruption and extortion, and Rabbi Gabriel Stern advises Plaintiff that he can have his wife and kids back if he's silent on the shameless accusations (of child sexual exploitation's) against Defendants Yitzchok Dov (Isaac, George) and Malky Fisch.

12. Plaintiff can go on and on with facts & law, filling pages way beyond practical or permitted without leave. But there is no sense in doing so at this stage, as soon as it's above the threshold of plausibility. (Rule 9(b) is addressed in paragraph 32 below.)

13. Plaintiff is working hard on getting Council on board. Smaller firms make it sound like this is a Mega Case, way beyond what they can handle. And larger firms state that this will cost a million dollars in legal fees to prosecute and collect. Due to the sophistication of the Criminal Enterprise. And further advise that this is really a case for the United States Department of Justice to handle and/or for economies of scale (mass torts or class) actions.

14. Plaintiff is working on many fronts and hoping for a breakthrough shortly. *At the worst case scenario, this case is a steep learning curve for Plaintiff's new legal career¹. Provided Plaintiff can overcome his "absent mindedness" and / or follow up in writing after hearings.*

b. Joseph Maria (Leave to sue, &/or leave is not required, &/or in the interim, rent paid to Chase.)

15. Unfortunately Plaintiff needs to further push this issue slowly but surely. Plaintiff had hoped by this stage in the proceeding Joseph Maria will stop rebuffing the jurisdiction of this court and this won't be necessary.

16. However Joseph Maria continues to not pay Chase Bank (secured creditor) as he is required to do. And he has not been paying Chase Bank since January 1, 2018, the date Alan Sheinkman became the Presiding Justice of the Appellate Division 2nd Dept. in the State of New York.

17. As mentioned, Alan Sheinkman is the husband of Faith Miller, the attorney for (Creditor and Defendant) Esther Klein. Arranged by the co-conspirators in the Enterprise to Oppress Plaintiff. Empowering Joseph Maria to act as the law onto himself. He has not even appeared in this court on January 16, 2019 for the hearing he requested in his motion.

18. And Defendant Esther Klein via her attorney Faith Miller, is vindictive against Plaintiff and her son in high school. She rather harm the last remaining asset of the Estate (the marital home), and render the Plaintiff and her son homeless, even though that would be at a great expense to herself.

19. Therefore the DSO is offset (no less than during the pendency of this proceeding) and a direct violation of the Equal Protection clause of the United States Constitution as alleged in the Complaint (Paragraph 40) via reference (Doc27, last paragraph).

20. Plaintiff is still hoping that this cross motion will be enough to stop the madness. Before this court's intervention is needed. And that Joseph Maria will start paying this week Chase Bank in full with the funds (\$15,153.38) he admits he collected and willingly be held to account for the remainder.

21. Otherwise leave to sue Defendant Joseph Maria is needed, and/or in the alternative, a determination that such leave is not required, and/or in the alternative,

22. An interim Order that Hamaspiik (Tenant) pay the \$1472 monthly rent to Attorney Robert Lewis, who will pay Chase Bank. Chase Bank prefers the secured loan payments be made via Plaintiff's attorney vs. rent directly from Tenant.

23. There is no urgency for Plaintiff on this, other than to demonstrate a good faith effort to Chase Bank, and/or until Chase Bank gets too concerned on the funds Joseph Maria collects but does not distribute to Chase Bank, as Joseph Maria is required to do.

¹ And Plaintiff is aiming in the next few weeks to get on the primary ballot in June 25, 2019 for District Attorney of Rockland County. To better de-influence government policy on the Criminal RICO side of the Criminal Enterprise mentioned in the Complaint. Which would also improve the personal security for Plaintiff and his son. And easier fundraising for the legal fees for this case.

c. Order to strike Defendants Motions, &/or not act on them, &/or deny them for being Defective.

24. All 6 Motions to Dismiss (Doc4, Doc7, Doc12-15 + 19-21, Doc16-18, and Doc 25-28 in this case) don't comply with Fed. R. Bankr. P. 7012(b). "shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court."

25. And (Doc4, Doc7, Doc12-15 + 19-21, Doc16-18, and Doc 25-28 in this case) also does not comply with Fed. R. Civ. P. 12(e) "must point out the defects complained of and the details desired."

26. The blanket argument, that the Complaint in it's entirety lacks particularity, is frivolous procedurally. Especially in light of the allegations in the Complaint (Doc1 of this case) of multiple felony arrests, of multiple Defendants, listed in the Complaint.

27. And as mentioned above "the allegations in the Complaint of the arrests, of multiple Defendants, for multiple Felonies, by government law enforcement agencies, put's the allegations way above the threshold of plausibility. In part because, by definition, government law enforcement personnel and their documents allege the same."

28. Doc4, Doc12-15 and Doc 25-28 have no standing to dismiss Complaint, other than for the(3, 2 & 2) Defendants retained (respectively). The blanket request for dismissal against all Defendants improperly prejudiced Plaintiff as per paragraph 38 below. Doc27 is not signed & got no leave to file to dismiss.

29. The 3rd motion (Docs12-15) appears to have not obtained leave to extend the filing deadline, nor obtained a return date for the Motion & many other defects(as does Docs25-28), &/or in the alternative,

d. Deny motions on the merits and/or Cured &/or leave to amend complaint.

30. The Complaint was cured from defects with the Declaration filed on February 19, 2019 (Doc10 in this case). And Plaintiff is very clear what it expects of Defendants, in paragraphs 73 and 78-79 of the Complaint.

31. The blanket argument, that the Complaint in it's entirety lacks particularity, is frivolous on the merits. Especially in light of the allegations in the Complaint of multiple felony arrests, of multiple Defendants, listed in the Complaint (Doc1 of this case).

32. Including on the allegations of Fraud. Because the Circuit Court affirmed. *In re Rockefeller Center Properties, Inc. Securities Litigation*, 311 F.3d 198 (3d Cir. 2002) *Id.* at 205. Judge Fuentes, writing for the court, explained Rule 9(b)'s standards as follows:

".....While we have acknowledged the stringency of Rule 9(b)'s pleading requirements, we have also stated that, in applying Rule 9(b), courts should be "sensitive" to situations in which "sophisticated defrauders" may "successfully conceal the details of their fraud."

Where it can be shown that the requisite factual information is peculiarly within the defendant's knowledge or control, the rigid requirements of Rule 9(b) may be relaxed. Nevertheless, even when the defendant retains control over the flow of information, "boilerplate and conclusory allegations will not suffice. Plaintiffs must accompany their legal theory with factual allegations that make their theoretically viable claim plausible."

33. In this case, the Defendants are as sophisticated as it gets, *including on playing dumb*, and the allegations are factual not legal.

34. And as mentioned above "the allegations in the Complaint of the arrests, of multiple Defendants, for multiple Felonies, by government law enforcement agencies, put's

the allegations way above the threshold of plausibility. In part because, by definition, government law enforcement personnel and their documents allege the same.”

35. It's the Defendants who are fanciful, to be assuming they can continue running vigilante operations and hide behind their delusional sovereignty. Good faith dialog, resolution and a transition to the rule of law, is a way better strategy going forward for all concerned.

36. And/or in the alternative, Plaintiff hereby moves this court for Leave to amend the Complaint.

e. Entry of Default

37. Plaintiff moves this court to approve an entry of Default by the Bankruptcy Court Clerk against Defendants: Avraham Lehrer, *(and Joseph Maria, if leave to sue is not required, otherwise upon leave granted)* pursuant to Rule 55(a) of the Federal Rules of Civil Procedure for failure to plead or otherwise defend this action as fully appears from the court file herein and Plaintiffs Affirmation (Doc8 of this case).

38. And the entry of Default is being held up solely due to the improper filing of the Motion (Doc4 in this case).

39. And an entry of Default against all other Defendants who further fail to file responsive pleadings, timely and properly, as required and Ordered by this court, and /or who this court deems to have already willfully done so.

Conclusion

Therefore, Plaintiff request an Order granting Plaintiff:

40.a) The striking of the 6 Motions (Doc4, Doc7, Doc12-15 + 19-21, Doc16-18, and Doc 25-28 in this case), and/or in the alternative, not acted on, for being defective, and/or in the alternative,
b) The denial of the 6 Motions to Dismiss for having no merit and/or Cured, &/or in the alternative,
c) Leave to amend the Complaint (Doc1 in the case).

41. a) Leave to sue Defendant Joseph Maria for acting as the law onto himself, and/or in the alternative,
b) A determination that such leave is not required, and/or in the alternative,
c) An interim Order that Hamaspik (Tenant) pay the \$1472 monthly rent to Attorney Robert Lewis, who will pay Chase Bank.

42. To approve an entry of Default by the Bankruptcy Court Clerk against Defendants: Avraham Lehrer, *(and Joseph Maria, if leave to sue is not required, otherwise upon leave granted)*.

And an entry of Default against all other Defendants if they further fail to file responsive pleadings, timely and properly, as required and Ordered by this court. And /or who this court deems to have already willfully done so.

And for further relief as may be deemed just and proper.

Sworn to before me this 04TH day
of MARCH 2019.

Notary Public

CABRERA JANETH MAGALI
Notary Public, State of New York
No. 01CA6308495
Qualified in Rockland County
My Commission Expires Jul 28, 2022

Benjamin Klein

CERTIFICATE OF SERVICE

State of New York)

County of Rockland)

I, Bertin Belony (name), certify that service of the Cross Motion titled Klein
vs Witriol was made 3/4/19 (date) by:

☒ Mail service: Regular, first class United States mail, postage fully pre-paid,
and addressed to:

Moshe Leib (Moses) Witriol 417 Schunnemunk Rd. Highland Mills, NY 10930	Kiryas Joel (Police) Dept. of Public Safety, Moshe Leib (Moses) Witriol 158 Schunnemunk Rd. Monroe NY 10950	Nicholas Fortuna -3 rd Floor 1010 Avenue of the Americas New York, NY 10018 (212) 213-8844 nfortuna@allynfortuna.com
Marc Stuart Goldberg 670 White Plains Road, Suite 121 Scarsdale, NY 10583 (914) 725-8200 (914) 725-7724 (fax) mgoldberg@mslegal.com	Joseph A. Churgin 55 Old Turnpike Rd. Suite 209 Nanuet NY 10954 (845) 624-3820 j.churgin@savadchurgin.com	Avraham Lehrer 6 Karen Drive Spring Valley NY 10977
Robert M. Sassloff Robinson Brog Leinwand Greene Genovese & Gluck P.C. 875 Third Avenue, 9 th Floor New York NY 10022-0123 (212) 586-4050 (212) 956-2164 (fax) rms@robinsonbrog.com	Joseph J. Haspel, Esq. 1 West Main Street Goshen NY 10924 (845) 294-8950 (845) 694-4409 jhaspel@haspellaw.net	Joseph Maria 301 Old Tarrytown Rd. White Plains NY 10603 (914) 684-0333 jmariapc@optonline.net

☐ Personal Service: By leaving the process with the defendant or with an officer or
agent of defendant at:

If service was made by personal service, by residence service, or pursuant to state law, I further
certify that I am, and at all times during the service of process was, not less than 18 years of age and
not a party to the matter concerning which service of process was made.

Under penalty of perjury, I declare that the foregoing is true and correct.

Date 3/4/19 Signature [Signature]

Print Name: Bertin Belony

Sworn to before me this 04th

CABRERA JANETH MAGALI
Notary Public, State of New York

day of MARCH, 2019

No. 01CA6308495

Qualified in Rockland County
My Commission Expires Jul 28, 2022

Notary Public

Address: 18 Fredrik drive

Spring Valley New York, 10977